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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,699	04/21/2004	Karen M. Cheves	1001.1705101	5388
11050 7590 11/23/2010 SEAGER, TUFTE & WICKHEM, LLC 1221 Nicollet Avenue Suite 800 Minneapolis, MN 55403				
EXAMINER				
GILBERT, ANDREW M				
ART UNIT		PAPER NUMBER		
3767				
MAIL DATE		DELIVERY MODE		
11/23/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/828,699

Applicant(s)

CHEVES ET AL.

Examiner

ANDREW M. GILBERT

Art Unit

3767

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 November 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): the 35 USC 103(a) rejection of claims 15, 26-33.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 15 and 26-33.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/KEVIN C. SIRMONS/
Supervisory Patent Examiner, Art Unit 3767

/Andrew M Gilbert/
Examiner, Art Unit 3767

Continuation of 11, does NOT place the application in condition for allowance because: The applicant's arguments have not overcome the prior art of record.

The rejection of claims 13, 26-33 under 35 USC 103(a) as being unpatentable over Wu et al has been withdrawn in view of the applicant's Remarks on pg 6 regarding the application of 35 USC 103(c).

The applicant argues in response to the rejection of claims 13, 26-33 under 35 USC 102(e) in view of Wu et al that Wu et al does not teach undulations of the blades when the balloon is inflated.

The Examiner notes against that Wu et al's silence as to the undulations of the blades when the balloon is inflated is not an admission that Wu does not teach the limitation (see Final Rejection, pg 7, ¶ 7). Wu's cutting members are metallic, similar to a knife, having a rigid structure. It is inherent and necessarily the case that a rigid, metallic knife-like blade will not lose its undulating structure as shown in the deflated configuration when in a fully inflated configuration.

The examiner additionally notes, see Final Rejection, pg 7, ¶8, that Kelly 2005/0228343 is not applicable or persuasive to argue that maintaining the undulations of Wu's blade when inflated is not an inherent property of Wu's blade. First, the Kelly reference is not the Wu reference and no teachings of Kelly may be used to contradict the explicit teachings in Wu. Second, Kelly's structure of the blade and attachment to the balloon is significantly different from Wu. For example, Kelly discloses varying blade rigidity (Kelly, ¶13). Kelly discloses a joining member 38 to attach the blade to the balloon that may be elastic or pliable; whereas, Wu uses an adhesive. Kelly teaches flexibility and bending of a blade; whereas Wu explicitly discloses a metallic, knife-like rigid blade attached directly to the balloon via adhesive and one that would necessarily maintain its undulating structure in a fully inflated configuration. The rejection is maintained.